

No. 2799

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

YEE CHUNG,

Appellant,

vs.

THE UNITED STATES OF AMERICA,

Appellees.

BRIEF FOR APPELLANT.

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Filed

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F. D. Monckton

Clerk

FRANK D. MONCKTON, Clerk.

By.....Deputy Clerk.

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Preliminary Note.

The appellant in this case offered overwhelming proof that he was born at 728 Sacramento Street, San Francisco, in 1880. Seven uncontradicted witnesses, one being a white man, six being leading Chinese merchants of San Francisco and one having been for twenty-five years and being at the time of the trial the personal servant of the U. S. Commissioner of Immigration, established that the appellant was the child born in San Francisco and the Government has not attempted to refute this proof.

The appellant is the holder of a judgment of a U. S. Commissioner issued in 1897 discharging

him as a native of the United States. The very Immigrant Inspector called as a witness to question the accuracy of the appellant's description of the U. S. Commissioner who discharged him had theretofore written the opinion and made the order approving his status of a native on the ground that he was undoubtedly the person described in the judgment.

Further, his status as a native has been four times expressly recognized by the U. S. Immigration officials—twice on his departure from the country on visits to China and twice on the bringing in of his two sons, now in school at Pittsburg, Pennsylvania (46).

The alleged discrepancies upon which the Court relied to defeat the appellant's claim are relatively few and unimportant; the consequences of an affirmance are so disastrous—banishment from the country of a man who has admittedly followed peaceful pursuits in this country, undisturbed for nineteen years, to be followed by expulsion of two minor sons now in American schools,—that counsel earnestly appeal to the Court for a critical examination of the somewhat lengthy record. To this end counsel have done their utmost to assist the Court by painstaking analysis of the testimony.

Statement of Facts.

The appellant was arrested by W. A. Brazie, a Chinese Inspector, while standing at the Southern

Pacific Railroad Station in Los Angeles, July 14, 1914 (Tr. 18). He was taken to the Immigration Office in the Federal Building immediately and his statement taken in the absence of counsel (Tr. 18). On being arrested he declared that he was a native born citizen of the United States, having been born in San Francisco, California (Tr. 20).

On the trial the appellant testified at great length and called seven Chinese and a white witness and introduced documentary evidence consisting of a judgment of U. S. Commissioner George E. Johnson, U. S. Commissioner of the District of Vermont, showing that he had on the 19th day of January, 1898, after full hearing, discharged the appellant (Tr. 278).

The Government, on the hearing before the U. S. Commissioner doubted that the judgment held by the appellant was even an authentic judgment and questioned the authenticity of the various papers held by the appellant. On stipulation of counsel they were transmitted to the Clerk of the District Court of Vermont and were returned by the Clerk with a letter showing them to be genuine and correct in every particular (see statement of counsel, Tr. 38); letter of U. S. Commissioner, Los Angeles to Clerk of the District Court of Vermont (Tr. 335); and letter of the Clerk in reply assuring the Commissioner of their genuine character (Tr. 337-8).

Statement of Facts (Continued).

CHRONOLOGICAL HISTORY OF YEE CHUNG AND HIS WHERE-ABOUTS FROM BIRTH, AS GIVEN BY HIMSELF.

Yee Chung, the appellant, was born Feb. 17th, 1880, at 728 Sacramento Street, San Francisco (*Tr. 25, corroborated by witnesses, see Tr. 172-208-202-184-196-119-106*). He was the son of Yee Kim Sing and Wong Shee, who are both still alive and now in China (*Tr. 26*). Yee Kim Sing the father was bookkeeper for and member of the mercantile firm of Quong Woh Chong at 728 Sacramento Street. The father and mother went to China in 1881 taking the appellant, then a child of about two years, with them (*Tr. 27*). The father remained in China only a few months, returning to San Francisco, leaving the mother and the appellant in China (*Tr. 27*). Yee Chung remained in China until he was about 18 (*Tr. 27*) when he returned to the United States—in 1897—by way of Vancouver, B. C.; thence to Montreal; thence to Burlington, Vermont; at which latter place he was arrested and taken before the United States Commissioner George E. Johnson. He was given a hearing and was discharged on the ground that he was a native of the United States (*Tr. 294-295, report of Inspector Mayer*). The original judgment went down with the appellant's trunk on the steamship "Dakota" when she sank on a trip to China leaving Seattle Feb. 18th, 1907 (*Tr. 36*). The Government made no question concerning the accuracy of the testimony of the appel-

lant relating to this or any other voyage, nor as to the fact that appellant was such passenger. A certified copy of the judgment was introduced and is in the record (Tr. 276-279).

Yee Kim Sing the father had, during the absence of Yee Chung in China as a child, sold out his interest in the business in San Francisco and had gone into business at Boston, Mass., with the general merchandise firm of Sam Sing Company (Tr. 30). The father came on to Burlington from Boston when the appellant was brought on for hearing before Commissioner Johnson and was a witness at the hearing (Tr. 31). After his discharge by Commissioner Johnson the appellant went with his father to Boston where he remained only a few days and was sent by his father to Carnegie, Pennsylvania, where he lived for about ten years (Tr. 31). At the end of this period the appellant went to China via Seattle on Feb. 18th, 1907 (Tr. 31-33). (See also the papers presented to the Immigration Inspector at Seattle, Tr. 275.) On his departure from Seattle and applying for the right to return the appellant presented his own affidavit, the record of U. S. Commissioner Johnson containing the judgment and the affidavit of two white witnesses and one Chinese witness, certifying to their belief in the facts and to his residence for a long period of time (Tr. 273-6). The Steamer "Dakota" was wrecked en route and sinking carried down with appellant's trunk certain

papers. Other papers the appellant had in his pocket (Tr. 37).

The appellant remained in China until about October, 1909 (Tr. 39). Prior to appellant's return to the United States the first time, namely in 1898, when he was discharged by Commissioner Johnson, he had married (Tr. 39). This marriage took place a little over a year before his departure for the United States and prior to his departure for this country there was born to him a son (Tr. 39) and a second son was born to his wife after his return to the United States (Tr. 40). The first son was born about July 5th, 1897, and the other about the 25th of July, 1898. On his return to the United States on this second trip in 1909 he landed at the port of San Francisco about Nov. 12th, 1909 (Tr. 41), and had with him the transcript of the Johnson judgment, together with the other affidavits produced by him prior to his departure (see defendant's exhibit "A", Tr. 273-280). After landing he went to Homestead, Pennsylvania.

To summarize thus far appellant had two landings in the United States:

First at Vancouver, B. C., when he was arrested and discharged by Commissioner Johnson in January, 1898. (Tr. 276.) Second at San Francisco on the SS. "Manchuria" Nov. 12th, 1909. (Tr. 41.)

Subsequent to his return in 1909 the appellant who was residing in Pennsylvania brought his two

sons to the United States. The eldest named Yee Woh came first and was followed by the younger son, Yee Lai (Tr. 41). Both of these sons were landed as the minor sons of a native of the United States. (See Defendant's exhibits "C" and "D", Tr. 291 and 293 with photographs attached.)

The Court's attention is respectfully urged to the following quotations from the Immigration Record's relative to the landing of Yee Woh, eldest son (Tr. 291):

The alleged father claims to have returned to the United States from China by Vancouver * * * and to have immediately proceeded to the United States via Montreal to Richford, Vermont. He presents court record of the discharge No. 121 issued in his name by the Court of Vermont. The alleged father, * * * was landed at this port No. 47 "Manchuria" Nov. 12, 1909, by virtue of his previous landing Commissioner Johnson Jan. 19th, 1897 * * * *in my opinion the prior landing record No. 47 contains sufficient evidence to show that the alleged father in the present case is the identical person landed by the Court in 1897. Accordingly, the essential trip is verified and I recommend admission.*

It will be noted therefore that the inspector of the law division distinctly passed upon the evidence as to Yee Chung being the identical person named in Commissioner Johnson's record in the same proceedings.

The investigating interpreter made the following rather remarkable report commendatory of the appellant:

The alleged father, Yee Chung, *stated his testimony in a candid and frank way corroborating all of his alleged son's statements in a most minute manner so that I feel impressed that the truth was told.* The witness Yee Wing also made a statement which corresponds in its entirety to all testimony given by Yee Wah. *On account that all testimonies were given in such a frank way and corroboratively implying the truth, I think I feel justified to ask a favorable consideration concerning the admission.* (Tr. 291-2.)

The certificate of identification of the elder son Yee Woh (Tr. 291) and of the younger son Yee Lai (Tr. 293) certify that they are sons of a native and that they have made satisfactory proof concerning their status (see photographs of original certificate, Tr. 290-293).

When the appellant Yee Chung returned to San Francisco in 1909 on voyage 46 "Manchuria" his case was considered by Charles D. Mayer, Chinese Inspector. This same Charles D. Mayer was a witness called by the Government in the District Court in this case, apparently, to testify, that the appellant's description of the U. S. Commissioner was not accurate, Inspector Mayer having been familiar with the appearance of Commissioner Johnson. It becomes important therefore to note that Inspector Mayer in admitting the appellant to the United States and landing him on the afore-said trip No. 47, in 1909, considered the whole question, and passing upon the judgment of Commissioner Johnson reported as follows:

“The ground of the discharge is not shown but in view of the fact that it appears that the respondent in that case entered the United States at Richford, Vermont, and was consequently taken to Burlington, where he was discharged by Commissioner Johnson, I am satisfied that he was discharged on the ground of birth in the United States, because had he set up any other claim such claim would have been investigated at the port at Richford.”

After certifying to the authenticity and genuineness of the record Inspector Mayer proceeds as follows:

“Considering the lapse of time appellant claims to have been arrested and discharged by Commissioner Johnson, *I am reasonably satisfied from his examination* that he is the respondent Yee Chung, discharged by Commissioner Johnson, Jan. 18th, 1897.”

And discussing his description of the United States Commissioner who discharged him, Inspector Mayer, who was familiar with Commissioner Johnson ends his opinion as follows:

“I think it would be unreasonable to hold the appellant too strictly to this description in view of the twelve years that have elapsed since his alleged discharge. In view of the foregoing I recommend landing.”

In addition, therefore, to the two landings and recognitions of the U. S. Government, the status of Yee Chung was twice recognized and approved in the landings of his sons, as above set forth.

Therefore the status of Yee Chung as a native of the United States has been one judicially deter-

mined by the U. S. Commissioner and four times recognized and approved by the U. S. Immigration officials.

On the arrival of the sons they were taken to Pittsburg, Pennsylvania, where they entered a school for the purpose of learning the English language and they are still there (Tr. 46).

Yee Kim Sing, the father of the appellant, went to China after closing out his business in Boston and has never returned to the United States (Tr. 46-48).

On the hearing in the District Court seven witnesses were called to support the proof offered by Yee Chung as to his birth in San Francisco and his various trips to China.

The Government relies for deportation on certain claimed inaccuracies and discrepancies in the testimony of the appellant and upon the production of certain Canadian records of the arrivals at the port of Vancouver, during the year 1898, and covering the period of time when Yee Chung testified that he arrived at Vancouver and went by way of Montreal to Burlington, where he was arrested. These records were produced by the witness Joliffe (Tr. 136) who had but a very recent acquaintance with Canadian records and testified to having no knowledge of the manner in which the records were kept in 1897. The burden of this testimony was that there were 305 Chinese landed on the "Empress of Japan" October, 1897,

and 177 on the next succeeding steamer. Out of the 305 landing on the "Empress of Japan" there were two Chinese named "Yee Chung" but none of that name on the subsequent voyage. It is the contention of the Government that neither of the persons named Yee Chung answers to the description of appellant; but in answer to the contention of appellant's attorneys in the Court below that there were many out of the hundreds of the Chinese on board who did answer to the description of the appellant, the Court examined the records and announced as follows (Tr. 154):

The COURT. It is apparent from these manifests that a number of individuals ranging from 16 to 17 or 18 entered this port at this time, none of them, however, by the name of Yee Chung.

Mr. McNAB. That fact, as stated by the Court, will be admitted, will it gentlemen?

Mr. SCHOONOVER. Certainly.

(The appellant at the time of this landing was nearly eighteen.)

This evidence, furnished by the Canadian records, will be subsequently examined and discussed.

Argument on the Facts.

The foregoing statement of facts, gives a running narrative from the testimony of appellant himself, which we contend was not in anywise disproved or even impaired by any testimony introduced by the Government. The Judge of the Dis-

trict Court, however, in writing his opinion, used the following language:

“There is considerable evidence adduced by Chinese witnesses (the learned Judge failed to note that there was also a white witness) to the effect that the aforesaid Yee Kim Sing had a son born to him in San Francisco, at the time alleged by defendant herein, and some evidence of some Chinese witnesses to the effect that the defendant, Yee Chung, is that son.”

We here assert, with the utmost emphasis, that not only is their *some* evidence, as stated by the Court, but there is absolutely convincing evidence to that effect *and absolutely none to the contrary*. The Court then proceeds:

“The whole question in the case, however, centers about a determination of the defendants that he is the individual named Yee Chung, who was adjudged to be rightfully in the United States.”

While we meet the Government squarely on the issue that Yee Chung is the person named and described in the judgment of Commissioner Johnson, yet the learned Judge of the District Court below is in error when he states that that issue is determinative in the case. While proofs might be offered in a given case to destroy the validity of a record and thereby impair the credibility of a witness, yet if the applicant establishes by undisputed and unassailed testimony of seven witnesses that he was born in San Francisco, no Court is authorized to reject such testimony, and order the deportation

of the defendant. On a somewhat similar state of facts, but much less persuasive, the Circuit Court of Appeals of the Sixth Circuit, in *Pang Sho Yin v. United States*, 154 Fed. 660, overruled the District Court in ordering deportation of a Chinese claiming citizenship.

THE TESTIMONY OF SEVEN WITNESSES ESTABLISHING THE FACT THAT APPELLANT, YEE CHUNG, IS THE SON OF YEE KIM SING AND WAS BORN AT 728 SACRAMENTO STREET, SAN FRANCISCO, IS NEITHER DISPUTED NOR ASSAILED.

It may be remarked, without the slightest fear that the U. S. Attorney will question the statement, that the witnesses produced on behalf of the appellant in the Court below were of the very highest and most reputable class of Chinese. Among them were several merchant princes of San Francisco whose business is measured by millions and whose revenue to the United States Government reaches enormous sums every year. Nothing could induce merchants of this description to lend their voices to perjury. In the experience of counsel, no Chinese claiming to be a citizen of this country has supported himself by the testimony of witnesses more nearly beyond reproach; nor is there the slightest doubt in the minds of the appellant's counsel, that appellant is, as he claims to be, a native of the United States.

In addition to the merchant witnesses, the personal servant of General Backus, at that time United States Commissioner of Immigration at

the Port of San Francisco was produced. He had been such servant for nearly a quarter of a century. All of these witnesses were taken through their many voyages to China and back, testified to the dates of their trips and the times that they met Yee Chung and his family. The records of the Immigration Department were before the U. S. Attorney. In not a single instance was an attempt made to dispute one of these witnesses as to the date of a single voyage; that he was a passenger; that he departed and returned on the dates given. Nor could such assault be successfully made.

In the following summary the Court is earnestly invited to the peculiar reasons for the recollection of the witnesses. The custom of shaving the infant one month from birth, on which occasion a feast is given by the parents to all the friends of the family, is dwelt upon with particularity, and the restaurant,—a famous hostelry in San Francisco,—is described where this feast took place. The various gifts sent back by leading Chinese merchants to the home country to be delivered to the wife and child, from the father, are narrated, and the specific vessels upon which the trips were made are named. In fact nothing was omitted to throw open to the Government the full scope of its powers of investigation that it might have adequate opportunity to determine whether these Chinese were speaking the truth or not. The testimony of the personal servant of the U. S. Commissioner alone, would have been sufficient to establish the case of the appellant.

This Chinese would not have dared to give testimony relative to such vital matters unless it was strictly in accord with the truth and could be corroborated by the Immigration records in the custody of his master; yet not the slightest attempt was made, although weeks were allowed for the purpose of investigation, to dispute a single element of this testimony.

TO SUMMARIZE THE TESTIMONY ON THE QUESTION OF BIRTH.

YEE YING DOCK. Was born in San Francisco, at 741 Sacramento Street (Tr. 117). His father was a merchant having a store diagonally across the street from the store in which Yee Kim Sing (the father of the appellant) worked (Tr. 118). The witness left for China in 1897 and prior to his departure Yee Kim Sing and his wife had no child (Tr. 118). Yee Kim Sing, however, followed him to China in 1881 (Tr. 119), bringing with him his wife and baby boy, then about two years old (Tr. 120). The witness remained in China about ten years, seeing the boy frequently. The boy's name was Yee Chung and the witness identified the appellant as the same person that he knew as that boy (Tr. 120). The father, Yee Kim Sing, remained but a few months in China, returning to San Francisco. The witness was not allowed to testify to declarations of the father, in letters, announcing the birth of his son (Tr. 122) and this is hereafter considered under assignments of error. The witness returned to San Francisco in

1890 and saw the appellant's father, Yee Kim Sing, on his return (Tr. 123). The witness returned to China a second time in 1895, again seeing Yee Chung and identified the appellant as the same boy who had been brought from the United States as an infant (Tr. 123). The witness remained one year and eight months in China and during the time that he was there the appellant, Yee Chung, was married (Tr. 124) and before the witness left China Yee Chung's eldest son was born and the witness "partook of the feast which was set to celebrate his boy's birth". The witness was invited to the marriage feast and attended the wedding (Tr. 124). The witness made a third and last trip to China in 1907. Yee Chung had in the meantime returned to the United States but the witness saw his wife and boy in the Chow Duey village (Tr. 125). He knows that Yee Chung, after returning to the United States, lived in Pittsburg; corresponded with him several times a year. The witness was at one time a registered voter of the City and County of San Francisco (Tr. 126).

LEE LEUNG. Is a cigar maker and knew Yee Kim Sing, father of the appellant. The witness has lived in San Francisco for forty years (Tr. 106). Yee Kim Sing was the storekeeper at 728 Sacramento Street and the witness knew his wife, Wong Shee. They lived upstairs over the store. He knew of the birth of the baby and saw it a couple of weeks after its birth (Tr. 106) and after the celebration of the feast of the shaving, which the witness described in detail, he saw the

baby often (Tr. 107). The ceremony of the shaving is as follows:

The baby is first shaved and then the friends give the baby presents and are invited to celebrate that birth or shaving feast. The feast for the birth of Yee Chung was celebrated at Hang Far Low restaurant (n. b., a celebrated hostelry in Chinatown) and the baby was named Yee Chung. The witness knew of the departure of Yee Kim Sing, wife and baby (Yee Chung) for China when the baby was about two years old (Tr. 107). Afterwards, in 1892 (about twelve years later), the witness went to China. Yee Kim Sing, the father, had returned to San Francisco after only a few months' absence and when the witness departed for China Yee Kim Sing sent by him one hundred dollars in Mexican money to be given to Yee Chung's mother (Tr. 108). The witness visited Yee Chung and his mother and remained in China about a year, seeing them several times (Tr. 108). Yee Chung was then about fourteen or fifteen years of age (Tr. 109). Witness remembers that on China New Year in 1893 he spent the day as the guest of Yee Kim Sing's wife and boy, Yee Chung (Tr. 109). The witness positively identified the appellant in the Court room as the same Yee Chung whom he had seen grow up from babyhood and who had been taken to China by his father (Tr. 109). Likewise he saw Yee Chung on his return voyage to San Francisco (Tr. 109) and often after that. He had been told about his arrival at Quong Chung

Sing's store on Commercial Street and went over to the store to see him several times. Yee Chung visited him at his room (Tr. 110) and discussed his parents and the incidents of his life, and he met him on subsequent occasions, discussing his various trips (Tr. 112).

WONG CHUNG. Was born in San Francisco and is the personal cook of Commissioner of Immigration, Mr. Backus. He has been such cook continuously for twenty-five years, never having worked for any other person (Tr. 171). He first went to China in 1880 and was about thirteen years of age. He remained there about ten years. The witness knew Yee Kim Sing, the Chinese merchant, at San Francisco, before the witness left on his trip for China. He was in the general merchandise business on Sacramento Street named Qwong Wong Chung. Knows that a son was born to the wife of Yee Kim Sing before the witness departed for China, and after the witness had been in China for a year or so the father and mother came on with the baby boy, then about two years old (Tr. 172). They lived about three Chinese miles—approximately one English mile from the witness and the witness visited them several times a year. The mother of Yee Chung and the father of the witness having the same family surname. The witness returned from China to San Francisco in 1889 (Tr. 174) and when he returned Yee Chung was about ten years old. The witness had seen Yee Chung a few days after he was born and then saw him in China until he was about ten

years old. The witness again returned to China (did not see Yee Chung as he had gone to the United States). He saw Yee Chung's wife and one baby, just able to walk, and one a few days old, both being boys (Tr. 174). The witness made another trip to China in 1906, returning to the United States in 1908. On the last trip back Yee Chung was in China, having preceded Wong Chung only about two months (Tr. 175). Yee Chung followed him to America. After the return of the witness to America he saw Yee Chung many times and he positively identified the appellant as the Yee Chung, son of Yee Kim Sing.

YEE FOO. Is a merchant, member of the Hing Lung Company doing a business of about \$300,000.00 a year and paying about \$40,000.00 annual revenue to the United States (Tr. 184). He first came to the United States in 1872. Knew Yee Kim Sing, appellant's father, at 728 Sacramento Street. The witness went to China in 1879 and when he left for China Yee Kim Sing had no children (Tr. 184). The witness stayed in China about eight months, returning in 1880, and on his return from China found that Yee Kim Sing's wife had given birth to a boy (Tr. 185). The witness saw the child when he was a few months old and on his return stayed at Qwong Wah Chung's—where Yee Kim Sing was the bookkeeper (Tr. 185). Yee Kim Sing and the witness went into business during that year, the witness going up to Woodland, Yee Kim Sing sending him the goods to start in business with. He knows that

he departed from China about 1881, taking his wife and boy with him and returning the next year alone (Tr. 186). The witness three years later, in 1884, went to China, staying there about ten months and saw Yee Kim Sing's wife and baby boy, Yee Chung, on several occasions (Tr. 186). The witness did not go back to China again until about 1897 and remained just a year, seeing Yee Chung while there. Yee Chung's mother informed the witness that Yee Chung was going to be married. Afterwards Yee Chung was married and the witness had an invitation to the wedding and attended it in the Chung Doey village. The witness returned to China in 1901 and visited the family. (Yee Chung was not there, he having come back to the United States) (Tr. 188). The witness again made a trip in 1907, one year after the earthquake, and Yee Chung was at that time in China, he having returned to his family. The witness positively identifies the appellant as the son of Yee Kim Sing and answered as follows:

Q. That is Yee Chung?

A. Yes.

Q. Can you swear that this is the boy that grew up as the son of Yee Kim Sing?

A. Yes. (Tr. 189.)

YEE HING WO. Has a large drug store in San Francisco. Arrived in San Francisco in 1880, making the acquaintance of Yee Kim Sing shortly after his arrival. The witness was connected with the firm of Wong Ting Chung in Hong Kong with

which Yee Kim Sing had a connection in San Francisco. On the arrival of the witness in San Francisco he went directly to Quong Wah Chung's store at 728 Sacramento Street, being a member of the firm (Tr. 196). Yee Kim Sing was a member of the firm and part of his work was that of a bookkeeper (Tr. 197). Yee Kim Sing had, at the time of the arrival of the witness, a son about four or five months old, whom he took to China with him not long afterwards (Tr. 197). Yee Kim Sing returned alone to San Francisco and the witness—in 1883—departed for China, returning the following year. On going to China he took back with him from Yee Kim Sing to his wife, the mother of Yee Chung, certain clothes (Tr. 198). The little boy Yee Chung was then about four years old (Tr. 198). The witness again returned to China in 1889, remaining about two years, seeing Yee Chung and his mother many times. The witness again returned to China in 1898, remaining about a year, visiting the mother, but Yee Chung himself had come on to the United States. The witness identifies Yee Chung, the appellant, as the baby boy who was taken to China and whom he saw in China (Tr. 199). He has also seen him many times in the United States.

JAMES H. CLARK. A white witness in his sixty-fourth year, is a native of New York. His business is that of merchandise and insurance broker, chiefly in the Chinatown district. He has been in Chinatown since 1868 and testified that the

people say he is the oldest man in the Chinatown District. He deals chiefly in rice, oil, tea and insurance. In 1879-80 he knew Yee Kim Sing, member of the firm and bookkeeper for the Quong Wah Chong Co. He says that the number then was the *old number and was 728 Sacramento Street* (Tr. 203). He called there about five days a week and knew that Yee Kim Sing lived upstairs over the store but never went upstairs, as it was not the habit of white people to go into these private quarters. He saw the wife of Yee Kim Sing in the store and knows that there was a child born to them about 1880 or '81. He saw the baby downstairs in the arms of the woman supposed to be Yee Kim Sing's wife, but does not know whether the child was girl or boy (Tr. 203). Yee Kim Sing left San Francisco for China, to the best of the witness' recollection, about 1881, taking his wife and child Yee Kim Sing. He returned (without the wife and child) and continued doing business until he quit there, about 1896, going elsewhere. The witness knows Yee Chung, having met him the next time, as nearly as he could remember, about six years prior to the trial, he having been introduced to him as the old bookkeeper's son. This was about China New Years and the witness pointed out another Chinese in the Court room who was with Yee Chung at the time, namely Yee Hin Wo. The witness testified to the important character of the

business and size of the firms represented by the Chinese witnesses who testified at the hearing.

YEE SHUN CHUNG. Is a member of the mercantile company of Wing Hong Shing, 816 Washington Street, which firm does a business of about \$200,000 a year and pays revenue to the United States Government sometimes to the extent of \$50,000 a year (Tr. 208). The witness first came to San Francisco in 1877. He knew Yee Kim Sing at 728 Sacramento Street, where he was bookkeeper and member of the firm. A male child was born to the wife of Yee Kim Sing during the first or second month of the sixth year of Kwong Sue (Tr. 209). He describes the Chinese celebration on the birth of the child, at which he was present; he went to the shaving feast. The witness remembers Yee Kim Sing going to China with his wife and boy Yee Chung, and himself followed several months after and saw Yee Kim Sing and his wife and boy in his native village in China (Tr. 209). The witness remained five or six years in China and went back to China again in 1898. Yee Chung had then gone to the United States but he saw his wife and one boy. He went back to China again in 1903 and during the several years visited the family (Tr. 210). He positively identified Yee Chung as the boy in question.

THE RECORDS OF THE UNITED STATES IMMIGRATION SERVICE, LANDING BOTH FATHER AND SONS ON FOUR DIFFERENT OCCASIONS, ARE IN EACH CASE PRIMA FACIE EVIDENCE OF THE RIGHT ON THE PART OF YEE CHUNG TO REMAIN IN THIS COUNTRY AS A NATIVE OF THE UNITED STATES.

The foregoing statement of the law is laid down by this Court in the very recent case of

Chin Kam v. U. S., 232 Fed. 853, and cases cited therein.

The history of these landings is set forth and the various official records contained in the transcript from page 273 to 301, inclusive.

In an excess of caution we reiterate that the last landing ordered on the report of Inspector Mayer passes on every question and approves the landing on the ground that Yee Chung is the identical person named in Commissioner Johnson's judgment (Tr. 295). While Judge Bledsoe in the Court below, rendered his opinion, among other things, on the testimony of this witness Mayer that Yee Chung had not properly described the United States Commissioner (see opinion Tr. 11), notwithstanding the witness Mayer testified as follows:

Q. By Mr. McNAB. And at the time you wrote your report recommending as to the landing of these persons, including the defendant here, and his description, you had all of these things in mind, your knowledge of Mr. Johnson and what you had seen.

A. Yes I did. (Tr. 164.)

It may be remarked that the witness Mayer showed no evidence whatever of a desire to injure the appellant and in the opinion of counsel gave a clear impression of his belief that his opinion was correct and that Yee Chung is a citizen of the United States; yet the Court now orders his deportation.

AN EXAMINATION OF WHAT THE DISTRICT COURT CONSIDERS AS EVIDENCE SUFFICIENT TO DEPORT THE APPELLANT.

The opinion of Judge Bledsoe is given on pages 9 and 12 of the transcript.

In view of the fact that the opinion of the Judge includes only the discrepancies urged by the United States Attorney in the Court below, we may assume that it is the strongest statement that can be made adverse to the appellant. The facts which caused the learned Judge to "Entertain a want of satisfaction" are as follows:

1. The showing of the Canadian records.
 2. Alleged discrepancies and statements made by the appellant.
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THE CANADIAN RECORDS.

The Government produced as a witness A. L. Jolliffe, who presented certain records of Chinese landing at Vancouver in 1879 and covering the period when Yee Chung testified he first landed

at that port. These records simply contained columns of names with certain data and one name opposite each Chinese.

The witness testified that he had only been in the Government service for a short time and knew nothing whatever concerning the manner in which the data were kept at the time they were made in 1879 and knew nothing of the methods obtained at Vancouver at that time (Tr. 142-143), and did not pretend to say whether or not there were Chinese aboard not in the record or mis-described in the record (Tr. 149). In 1879 the Canadian Restriction Acts had not, as counsel are informed, been passed. There were on the two vessels for which records were produced 482 Chinese, 305 having come in on the first boat (Tr. 149). Of the 305 Chinese there were two answering to the name of Yee Chung, but it is claimed that neither answers to the physical description of the appellant. The Court examined the records and stated that there were a number of Chinese ranging from 16 to 18 years on the boat in question, being of the age of Yee Chung, but not of that name (Tr. 154).

All that can be claimed for this testimony is that out of nearly 500 Chinese, many of whom might have answered to the description of the appellant, none of that description had set opposite the description the name Yee Chung. It is recognized by decisions too numerous to mention and by the testimony in this case that Chinese

have several names, and furthermore, at the outset, it was not disputed between the Government and appellant's counsel that the only way of spelling Chinese names in English is by sound, the Court remarking even upon the difficulty in spelling in that way (Tr. 25). Some dispute even arose as to the proper spelling of the appellant's name in Court (Tr. 25). During the trial confusion arose through the interpreter in pronouncing the names of some of the witnesses on the stand. One witness spelled his name as "Ark", while the reporter gave it as "Dock". Furthermore, no record of signatures was kept by Chinese passing through into the United States (Tr. 151). We earnestly contend that the testimony of many witnesses as to the birth of the appellant in California, backed by the judgment of the U. S. Commissioner, should not and cannot be overthrown by the purely negative testimony that out of a list of nearly 500 Chinese, many of whom answer to the description of the appellant, the appellant's name does not appear, when as a matter of fact Chinese names and their spelling is a matter of uncertainty. The U. S. Commissioner had the opportunity when a few days later Yee Chung was brought before him to investigate this landing and presumably did so. A judgment is not to be set aside on speculation. Furthermore, the appellant testified that he was not asked to give his name when he landed at Vancouver, but was asked where he was going (Tr. 240-3). The

witness admits that he did not understand the question when asked by counsel if he had given his name and positively states that only a Chinese, evidently directing them to the proper train, asked him his destination.

Furthermore, the witness testified to what was unquestionably the practice in Hong Kong prior to the enactment of the Exclusion and Restriction Acts in the United States and Canada, namely: He bought his ticket at a Chinese store in Hong Kong where they kept tickets for sale (Tr. 240) and was never questioned on board ship as to his name. This custom of buying tickets at that time is well established by other evidence in the case. In the testimony of Yee Foo (Tr. 189 and 190), we have a very clear explanation of how these passengers were handled prior to the Exclusion Act. He states that the tickets were all bought through an agent as follows:

“The agent, he might hold all the tickets he can get, to make a profit of them; on account of sometimes more passengers coming, everybody want to buy tickets because the steamship only allow so many on each trip; when he get hold of some sometime he make from thirty to fifty dollars higher than the steamship company get, because the steamship company never sell any tickets through their agent.

Q. Do you as a passenger give your name to the steamship company?

A. *No sir, they never do; they give what they please; just like Charlie or Jones or whatever kind of name you go by, you give, and they give you a ticket—you can claim your name*

is Jones or you can claim your name is James and so on; they never give the right name. But now since the laws have been passed, when the steamship company sell the ticket he has to give the name; they are now pretty strict, the last few years; they want the people to get the return certificate and show it before they will sell the ticket. That is in the last ten years."

In view of this testimony, which the Government did not attempt to contradict, we can see no force whatever to be accorded to the purely negative showing of these Canadian records and yet this seemed to be the main reliance of the Government. The Judge in his opinion says that if any credence is to be given the testimony of the witness Jolliffe: "An investigation of all the Chinese passengers * * * was had and their names taken." It is respectfully asserted that the witness testified to no such thing; he merely states that now, according to present Canadian practice, under the Restriction Acts that practice has been followed and there is positive testimony in the record from Yee Chung that his name was not taken.

THE ALLEGED DISCREPANCIES.

It is alleged that the witness first stated that a Chinese interpreter asked his name at Vancouver and that he afterwards denied that it was asked. (Tr. 241). The testimony is on pages 241 to 243 and appellant first stated that a Chinese first asked

them where they were going. There is no statement whatever that it is the interpreter and when the Court asked him again the witness frankly stated: "I did not understand that Judge" and stated positively and repeatedly that his name was not taken and that he had not understood the question. Again it is urged that the witness had stated that he held ticket through to Boston and that he afterwards changed his statement to say that his ticket only read to Montreal. It is respectfully submitted that if the witness passed through Montreal as the last place in Canada on his way to Boston, any slight confusion on this question, which is perfectly natural, ought not to prejudice him. As a matter of fact, the witness Jolliffe on the stand spoke of certain immigrants being routed through to Mansonville, whereas he afterwards corrected this by saying that while routed to Mansonville their ticket was actually to Boston (Tr. 153). It is thirty-seven years since this witness made this trip and counsel ventures to suggest that even a white man, in a much less period, would have forgotten these details.

It is next noted by the Court that the appellant did not give a description of Commissioner Johnson which tallied with the facts. We find it difficult to express ourselves with reserve on this question. The fact that the witness did not give a proper description of the physical appearance of the U. S. Commissioner Johnson was testified to by Inspector Mayer, who knew Commissioner

Johnson. *Yet this same Commissioner Mayer* wrote the opinion landing the appellant Sept. 13th, 1909, and states *that he thinks it unreasonable* to hold him to too strict a description in view of the great lapse of time and says that he is convinced that he is the same person named in Commissioner Johnson's judgment (Tr. 295).

Furthermore, it seems beyond reason to expect a Chinese in a Court room, in a foreign country, to describe a judge when he probably did not know whether it was the Commissioner, District Attorney, or the bailiff whom he was describing.

At any rate the Government has heretofore passed on this, held it unreasonable to hold him to this proof, and has landed him. This same department now asks the judicial department to declare what one of its own officials determined was wrong, and that on the testimony of the same officer who rendered the opinion.

The only remaining point made by the Judge in the Court below is that when arrested the appellant asserted to the officer that he had some form of "native paper" in the possession of his clansmen in San Francisco. As a matter of fact the appellant did have a paper, namely, a judgment of the U. S. Commissioner discharging him on the ground that he was a native of the United States. No claim was made by the Government that this was not true nor was any attempt made to disprove the fact that he held such a judgment. It is only now claimed that he is not the person named in the judgment.

This examination was made by the inspector who had seized the appellant at a railroad station and he told the inspector that he did not have any certificate. This was true (Tr. 250). He was excited (Tr. 251) and after his examination was thrown into jail and kept there for further examination (Tr. 252-3). It is difficult to refrain from an expression of indignation against what seems to be the established custom of the Immigration Service of throwing these unfortunates into jails, examining them under stress of excitement, in the absence of counsel and friends, and then trying to deport them on the feeblest kind of alleged discrepancies which would not be even regarded in a Court of Justice as between white persons.

The Court mentions a remark of the appellant relating to a photograph presented to him by the District Attorney in an attempt to establish that it was his father. There is no inconsistency in his replies. He said first it was not his father (Tr. 116). When later shown the photo he said there was some resemblance but made it clear he was not his father (Tr. 220).

LEGAL ARGUMENT.

If appellant was born in the United States he is an American citizen and entitled to the protection of its laws.

U. S. v. Wong Ark, 169 U. S. 649.

This is a civil case and is to be determined by the preponderance of evidence. Facts positively sworn to are not to be overthrown by inference or suspicion.

Woo Jew Dip v. U. S., 192 Fed. 471 (holding evidence outweighs that of the government);

U. S. v. Leu Jin, 192 Fed. 580 (holding evidence of citizenship preponderates).

And where a resident of the country, of Chinese descent, is physically in the country resisting deportation, and not merely seeking to *enter* the country, and sets up the claim to citizenship, section three of the Exclusion Act requiring the Chinese to establish his right "by affirmative proof to the satisfaction of the Judge" has no application. "No rule of evidence can fritter away" his right.

Moy Suey v. U. S., 147 Fed. 697 (Seventh Circuit);

Chin Wah v. U. S., No. 2699, Court of Appeals, District of Columbia, decided Jan. 4, 1915, — Fed. —.

The decision of U. S. Commissioner Johnson is a conclusive adjudication as to nativity and citizenship and not now open to attack.

U. S. v. Yeung Chu Kong, 140 Fed. 748;

Leung Jun v. U. S., 171 Fed. 413.

In the following cases the District Courts have been reversed for ordering deportation. The facts

are so strikingly similar as to establish them as authority:

Pang Sho v. U. S., 154 Fed. 660 (6th Circuit);

U. S. v. Chin Lew, 187 Fed. 544 (2nd Circuit);

Woo Jew Dip v. U. S., 192 Fed. 471 (5th Circuit).

And the District Court of New York reversed on similar but much more slender evidence.

U. S. v. Leu Jin, 192 Fed. 580.

ASSIGNMENT OF ERROR NO. 9.

It was error to refuse to permit the witness Yee Ying Dock to testify as to the declarations made by the appellant's father as to the birth of Yee Chung (pages 121-2). (Excepted to; but all exceptions were also reserved by Court order, Tr. 19).

The declaration, act or omission of a member of a family who is a decedent, *or out of the jurisdiction* is admissible to prove pedigree (C. C. P. 1852).

It was established that the father was residing in China at the time of the trial.

ASSIGNMENT OF ERROR NO. 10.

It was error to admit a record purely *ex parte* for even the limited purpose of proving that a

certain person whose photo appeared departed for China. (See Assignment 10, page 309.)

The Court, notwithstanding this limited purpose, afterward permitted the appellant to be questioned concerning the resemblance of this man to his father and mentions it in his decision.

Plainly the record is an *ex parte* declaration and cannot be admitted to prove anything; yet it was used—and evidently with some success—to convince the Court that the person whose photo was attached might be the father of appellant and might have departed the jurisdiction.

Dated, San Francisco,
September 18, 1916.

Respectfully submitted,

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